STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LILLY MARIE JONES, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

KYLE JONES,

Respondent-Appellant,

and

BOBBIE JONES,

Respondent.

UNPUBLISHED
February 10, 2004

No. 249483
Mecosta Circuit Court
Family Division
LC No. 02-004326-NA

In the Matter of LILLY MARIE JONES, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

BOBBIE JONES,

Respondent-Appellant,

and

KYLE JONES,

Respondent.

No. 249860
Mecosta Circuit Court
Family Division
LC No. 02-004326-NA

Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

In Docket No. 249483, respondent-father Kyle Jones appeals as of right from the trial court's order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(g). In Docket No. 249860, respondent-mother Bobbie Jones appeals by delayed leave granted from the same order, which also terminated her parental rights under § 19b(3)(g). We affirm.

Both respondents argue that the trial court clearly erred in finding that § 19b(3)(g) was established by clear and convincing evidence. We disagree.

A statutory ground for termination must be proven by clear and convincing evidence. MCR 5.974(A) and (F)(3)[1]; *In re Miller*, 433 Mich 331, 344-345; 445 NW2d 161 (1989). The trial court's findings of fact are reviewed for clear error. They may be set aside only if, although there may be evidence to support them, the reviewing court is left with a definite and firm conviction that a mistake has been made. MCR 5.974(I); *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). Due regard is given to the trial court's special opportunity to judge the credibility of witnesses. MCR 2.613(C); *Miller, supra* at 337.

The evidence disclosed that respondent-father was granted liberal visitation, but failed to visit with the child. He violated his probation, pleaded guilty to two counts of larceny from a motor vehicle, and was sentenced to a year in the county jail. At the time of the termination hearing, he was scheduled to be released in approximately a month, but his probation officer had recommended that he be sentenced to a prison term of two to four years on the pending probation violation. Although respondent-father made progress during his incarceration, given his criminal history, lack of suitable housing and employment, and minimal contact with and failure to visit the child, the trial court did not clearly err in finding that termination was warranted under § 19b(3)(g).

With regard to respondent-mother, the evidence disclosed that she has a lengthy juvenile record of larcenies and home invasions, and committed a series of home invasions after discovering that she was pregnant with the child. She was incarcerated when the child was born. Although she had a good work record while in prison and was scheduled to be paroled approximately a month after the termination hearing, she had not finished her GED or taken parenting classes. Earlier, she refused to testify against her mother in her mother's criminal proceeding. The trial court did not clearly err in finding that § 19b(3)(g) was established by clear and convincing evidence.

We reject respondent-mother's arguments that termination of her parental rights was improper because the crime for which she was incarcerated is not an offense listed in § 19b(3)(n), or because she was not imprisoned for a period of time to warrant termination under §

[1] The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the termination hearing.

19b(3)(h). The trial court did not rely on either of these subsections as a basis for termination, and it was not improper for the court to independently consider respondent-mother's criminality and incarceration as factors relevant to an evaluation of her ability to provide proper care and custody for purposes of § 19b(3)(g). Further, while petitioner is required to provide *reasonable* reunification services, see MCL 712A.18f and MCL 712A.19(7), it could not reasonably provide services here while respondent-mother was incarcerated. Additionally, we find no merit to respondent-mother's argument that the trial court's isolated statement at a preliminary hearing establishes that it later improperly terminated her parental rights based solely on the child's best interests.

Next, we disagree with respondent-mother's claim that the trial court erred by failing to appoint a new attorney. When respondent-mother requested a new attorney, the trial court inquired into whether her attorney was prepared for the hearing. Respondent-mother failed to show good cause for substitution, i.e., gross incompetence or a legitimate difference of opinion concerning fundamental trial tactics, and appointment of new counsel would have unreasonably disrupted the proceedings. See *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001); *Conley*, *supra* at 46; see also *People v Johnson*, 215 Mich App 658, 663; 547 NW2d 65 (1996). The trial court did not abuse its discretion in denying respondent-mother's request for substitute counsel.

Nor has respondent-mother shown that her attorney was ineffective. See *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002); see also *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994). Counsel's choice of witnesses and evidence, and the manner of cross-examination and closing argument, were all matters of trial strategy. Respondent-mother has not overcome the presumption of sound strategy, or shown that she was deprived of a substantial defense that might have affected the outcome. See *People v Davis (On Rehearing)*, 250 Mich App 357, 368; 649 NW2d 94 (2002); *People v Flowers*, 222 Mich App 732, 737; 565 NW2d 12 (1997); see also *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). Also, because respondent-mother consented to the court's jurisdiction and failed to propose appropriate caregivers for the child, an appeal of the court's jurisdictional decision would have been futile. See MCL 712A.2(b)(2); see also *People v Kulpinski*, 243 Mich App 8, 27; 620 NW2d 537 (2000).

Having consented to the trial court's assertion of jurisdiction, respondent-mother may not now challenge that decision on appeal. See *People v Riley*, 465 Mich 442, 449; 636 NW2d 514 (2001); *In re Hatcher*, 443 Mich 426, 439; 505 NW2d 834 (1993).

Affirmed.

/s/ Christopher M. Murray
/s/ William B. Murphy
/s/ Jane E. Markey